



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

September 15, 1960

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Capitol Station  
Austin, Texas

Opinion No. WW-932

Re: Interpretation of Art. 10.15  
H.B. 11, 3rd C.S., 56th Leg.  
(Title 122A, Taxation-  
General) providing excep-  
tions to refunds of tax on  
special fuels.

Dear Mr. Calvert:

Your recent letter submits the following question for  
an opinion:

"Do you construe Article 10.15-(2)  
to mean that the delivery of special fuels  
into fuel supply tanks of tractors, machines  
and road construction equipment for use in  
hauling, moving and spreading dirt, gravel  
and other materials, supplies and products  
on and over highway construction jobs paid  
for from State funds to which special fuels  
taxes are allocated, will constitute and be  
deemed to mean the delivery of special  
fuels into fuel supply tanks of motor  
vehicles for taxable use when such construction  
job sites are not then and have not thereto-  
fore been open to the public for vehicular  
travel?"

We answer your question in the negative.

A tax upon special fuels is provided for by Chapter  
10 of H.B. No. 11, 3rd C.S., 56th Leg., (Title 122A, Taxation-  
General). Certain terms are defined in Art. 10.01, among which  
are the following:

"(5) 'Motor vehicle' means any automobile,  
truck, pickup, jeep, station wagon,  
bus or similar vehicle, propelled by  
a motor or internal combustion engine  
upon the public highways; provided, that  
any tractor, combine, or other vehicle  
or machine designed primarily for use  
off the public highways shall be deemed  
to be a motor vehicle when propelled

or serviced with special fuels for propulsion, upon the public highways.

". . . .

"(10) 'Public highway' means and includes every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel including toll roads, and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair."

The tax is levied by Art. 10.03, which reads in part as follows:

"(5) Every user shall report and pay to the State the tax, at the rate imposed, on each gallon of special fuels delivered by him into the fuel supply tanks of motor vehicles, unless said tax has been paid to a licensed supplier. . . ."

You have informed us that a contractor or user delivering special fuels into the supply tanks of tractors, machines, and road construction equipment used in highway construction jobs, as in your question, is ordinarily a "Bonded User" permittee under Art. 10.11 (1) and therefore entitled to purchase such fuel tax free. No tax liability arises against him until the fuel is "delivered by him into the fuel supply tanks of motor vehicles." This is to be contrasted with the status of non-bonded users (Art. 10.11(1), who are required to pay the tax upon acquisition from suppliers (Art. 10.03(3) ).

Provisions are made in Art. 10.14 for refunds of tax paid in certain situations. Exceptions to such refunds are made by Art. 10.15, as follows:

"(1) No tax refunds shall be paid to any person on special fuels used in any construction, maintenance or repair work on or in connection with the public highways of this State when and if such work is paid for from any State funds to which special fuels tax collections are allocated or is paid jointly from any such

State funds and Federal funds.

- "(2) The delivery of special fuels into the fuel supply tanks of any tractor, truck tractor, vehicle, or machine of any kind or description for use (a) in hauling materials, supplies or products over the public highways to or from, or in connection with, any highway construction, maintenance or repair work, or (b) for use in mowing the right of way of the public highways, when such work is paid for from State funds or State and Federal funds as above provided, shall constitute and be deemed to mean the delivery of special fuels into the fuel supply tanks of motor vehicles for taxable use."

In the situation presented by your question, no highway exists. There is no "way or place. . .open to the use of the public as a matter of right for the purpose of vehicular travel. . ." It is not "temporarily closed for the purpose of construction, reconstruction, maintenance or repair." It has never been opened. The machinery and road building equipment you describe are not propelled upon the public highways, while on the job site, and are therefore not "motor vehicles" within the quoted definition. This being true, delivery of motor fuel in the supply tanks of these vehicles would not constitute a taxable incident under the Act. However, the delivery of special fuels into fuel supply tanks of these vehicles to propel same on the highways in going to and from the job site is a taxable incident. As no tax has been paid by this bonded user, the "exceptions to tax refunds" provision contained in Art. 10.15 would not affect him.

#### S U M M A R Y

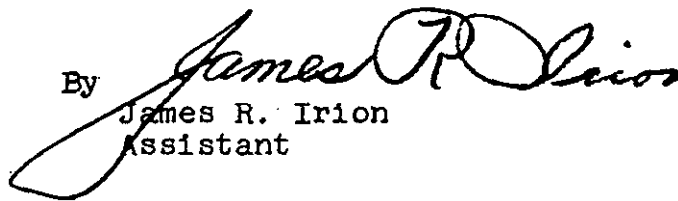
Under Chapter 10, Title 122a, Taxation-General, R.C.S., delivery of special fuels into fuel supply tanks of equipment used in

highway construction jobs paid for from State funds to which special fuels taxes are allocated, when such construction job sites are not then and have not theretofore been open to the public for vehicular travel, does not constitute delivery of fuel into the fuel supply tanks of "motor vehicles", as defined in that chapter, for a taxable use.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By

  
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APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL  
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